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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/812,883	03/31/2004	Michael A. Porzio	249289US40	4571
22850	7590	01/14/2008		
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			EXAMINER PADEN, CAROLYN A	
			ART UNIT 1794	PAPER NUMBER
			NOTIFICATION DATE 01/14/2008	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentdocket@oblon.com  
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<b>Office Action Summary</b>	Application No. 10/812,883	Applicant(s) PORZIO ET AL.	
	Examiner Carolyn A. Paden	Art Unit 1794	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 November 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8 and 13-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 13-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 28, 2007 has been entered.

The double patenting rejections and the rejections of the claims under 35 USC 102e have been withdrawn in response to applicants' amendments to the claims. Also the rejection of the claims over Levine has been withdrawn in response to applicants' amendments to the claims.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Porzio (5,897,897) or (5,603,971).

Porzio discloses an encapsulation composition and process. The claims in the prior patent appear to contain the same components of compositions and process of b of the present application. In this case at least two food polymers are contemplated in the claims. Each of the food polymers would have been expected to have their own glass transition temperatures. N-octenylsuccinic anhydride modified starch appears to be the same starch as sodium octenyl succinate modified starch identified in the patent at column 5, lines 46-48 and in claims 25-28 and the source of the starch appears to be the same in the application at page 20, lines 1-7 as in the patent (column 4, lines 18-22). The claims appear to differ from the prior patent in the recitation of the use of more than one octenylsuccinic anhydride modified starch. Wai-Chiu teaches enzymatically debranched starches as tablet excipients. Here enzymatically debranched starches are described as having improved tableting characteristics when compared to conventional starches. At column 2, line 62, dextrinized starches are described as hydrolyzed starches. At column 4, lines 61-67, derivatized starches are described as including octenyl succinate esters of starches. With the reference of Wai Chiu before him, it would have been obvious to

substitute the hydrolyzed starches of Wai Chiu for the modified starches of Porzio in order to improve the tableting properties of the Porzio encapsulate. It is appreciated that the more than one octenylsuccinic anhydride modified starch is not mentioned but one of ordinary skill in the art would have expected more than one modified starch from the hydrolysis reaction in the starch preparation.

Claims 1-8 and 13-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Porzio (5,897,897) or ((5,603,971) for reasons of record.

Porzio discloses an encapsulation composition and process. The claims in the prior patent appear to contain the same components of compositions and process of b of the present application. In this case at least two food polymers are contemplated in the claims. Each of the food polymers would have been expected to have their own glass transition temperatures. N-octenylsuccinic anhydride modified starch appears to be the same starch as sodium octenyl succinate modified starch identified in the patent at column 5, lines 46-48 and in claims 25-28 and the source of the starch appears to be the same in the application at page 20, lines 1-7 as in the patent (column 4, lines 18-22).

Applicant argues that Porzio does not contain component (b).

Component b is shown as a food component and another embodiment of the invention at 10, lines 28-36. It is appreciated that these ingredients are associated with maltodextrin but Porzio clearly draws equivalence among glassy matrices that include both maltodextrin and octenyl succinate modified starch at column 4, lines 15-39.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached by dialing 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

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system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Carolyn Paden/

Primary Examiner 1794